

REMARKS

Applicant would like to thank the Examiner for the careful consideration given the present application. Applicant would also like to thank the Examiner for his time. The application has been carefully amended to more clearly and particularly describe the subject matter which applicant regards as the invention.

Claims 1-33 are pending in the current amendment. By the present amendment, claims 1 and 14 are amended, claims 30-33 are new to the application, and the abstract and a couple of paragraphs of the specification are amended. As such, it is now respectfully submitted that each of the claims 1-33 are in condition for allowance.

It is respectfully requested that the rejection of claims 1-3, 7, 9-11, 14-15, 17-19, 23, 25-27 under 35 U.S.C. 102(b) as being anticipated by Fackler (U.S. Patent No. 5,463,692) be withdrawn. Fackler does not teach an actuator and switching elements that are "separately mounted parts," as recited in the amended independent claims 1 and 14. Fackler describes that a "three-position switch 14 includes a disc-shaped stator layer 60 fixedly mounted to the housing 12, a disc-shaped rotor layer 62 rotatably mounted to the stator layer 60, a plurality of sandwich switches 66A-66F formed on the stator layer 60 adjacent the rotor layer 62, and a plurality of cams 68A-68C mounted on the rotor layer 62 for engaging and disengaging the sandwich switches 66A-66F upon rotation of the rotor layer 62. A shoulder screw 72 and a nut 74 operate with a hole in the stator and rotor layers 60 and 62 for securing the switch 14 to the housing 12." Col. 4, lines 25-35. Thus, Fackler describes a system that is mounted together. The three-position switch 14 in Fackler, which the Office action relates to the actuator of the present invention, and the sandwich switches in Fackler are a single assembly mounted on the housing and are fixedly connected to each other. Applicant has amended claims 1 and 14 to more clearly define the subject invention over the Fackler reference by reciting that "the actuator (8) and the switching element (3;4) are separately mounted parts." The original limitation, found in independent claims 1 and 14, recited that the "actuator (8) and the switching element (3;4) are not directly connected to each other." This limitation is still, in the opinion of the applicant, not disclosed by the Fackler reference and applicant respectfully does not agree with the position asserted by the Office action. However, applicant has amended claims 1 and 14 to more clearly define

the subject invention over the Fackler reference by reciting that "the actuator (8) and the switching element (3;4) are separately mounted parts." Please note that the other amendment to claim 14 was for clarification purposes, as the limitation "for the controlling of features of the hearing device or hearing aid respectively" was moved from the end portion of the claim to the beginning portion of the claim. Therefore, the applicant respectfully requests that the rejection of claims 1-3, 7, 9-11, 14-15, 17-19, 23, 25-27 be withdrawn, as each of these claims depends from amended claims 1 and 14.

It is respectfully requested that the rejection of claims 4-6, 8, 12-13, 16, 20-22, 24, and 28-29 under 35 U.S.C. 103(a) as being unpatentable over Fackler (U.S. Patent No. 5,463,692) also be withdrawn. The Fackler reference does not disclose or suggest all of the elements recited in the amended claims, such as for example, the limitations already discussed in the independent claims 1 and 14 which these claims depend from, or the limitations of "the actuator (8) having a tongue protruding to the outside, with concave or convex recessed grip (12) on one or both sides" as recited in claims 8 and 24. Therefore, the applicant respectfully requests that the rejection of claims 4-6, 8, 12-13, 16, 20-22, 24, and 28-29 be withdrawn, as each of these claims depends from amended claims 1 and 14.

New claims 30 and 32 are dependent from claims 1 and 14, respectively, and are at least allowable for the same reasons that claims 1 and 14 are allowable. Claims 31 and 33 are new independent claims which are similar to pending claims 1 and 14, respectively, but do not include the limitation of "relocatable." The Fackler reference can only utilize its switch by using rotation, as said in each of the independent claims and throughout the specification (see Col. 4, lines 25-32, Col. 5, lines 40-52, Col. 6, lines 25-30). Thus, applicant respectfully requests that claims 31 and 33 are also allowable for at least the same reasons that claims 1 and 14 are patentable.

Applicant would also like to point out that the abstract and the specification of the patent are currently amended. A typographical error occurred in the specification where the word "reloctable" was printed. The amendments to the abstract and the specification correct this error so that the word now states "relocatable."

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is

invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. TSW-36641.

Respectfully submitted,
PEARNE & GORDON LLP

/Aaron A. Fishman/
Aaron A. Fishman, Reg. No. 44,682

1801 East 9th Street
Ste. 1200
Cleveland, Ohio 44114-3108
216-579-1700

October 15, 2007